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Ex. 5 - Deliberative

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Cuomo Picks 'Open Space' Advocate for Environment Chief

By LESLIE KAUFMAN

Gov. Andrew Cuomo is receiving plaudits from environmental groups for nominating Joseph Martens as the new commissioner of New York State's Department of Environmental Conservation.

Open Space Institute Joseph Martens Since 1998, Mr. Martens has served as president of the Open Space Institute, a nonprofit that works largely in the northeastern United States to acquire lands for conservation and sustainable development and farming. Mr. Martens also served as deputy state secretary of energy and the environment from 1992-94, during the gubernatorial administration of Mr. Cuomo's father, Mario.

Last fall the Department of Environmental Conservation was rocked when David Paterson, then governor, dismissed the well-respected Alexander B. Grannis after the public disclosure of a memo that Mr. Grannis had written about the negative impact that a new round of layoffs would have on the agency. He has since been hired to work for the state's comptroller.

The announcement of Mr. Martens's appointment drew praise from groups like the Natural Resources Defense Council. "Joe Martens' experience, judgment, and temperament make him the right person at the right time to meet the challenges that D.E.C. faces," said Ashok Gupta of the natural resources council. "He has the support and key relationships with the business and environmental community that will allow him to hit the ground running."

But Mr. Martens clearly has his challenges cut out for him. For one thing, the state faces severe budget troubles that are likely to keep staff levels low. He would also oversee the drafting of state regulations governing a hugely controversial type of natural gas drilling known as horizontal hydraulic fracturing. Many environmentalists worry that such drilling, which involves high-pressure injections of water and chemicals into rock, could pollute groundwater.

Last spring the state moved to greatly restrict such drilling in an upstate area that supplies most of New York City's drinking water, but much remains undecided. Many are avidly awaiting a report from the federal Environmental Protection Agency on the potential risks of fracking that is expected in 2012.

The Gannett Web site Pressconnects.com, which focuses on news of interest to the greater Binghamton, N.Y., area, has posted what it describes as a transcript of a speech that Mr. Martens delivered last year at Union College in Schenectady in which he urges the Department of Environmental Conservation to "go slow" on fracking until the E.P.A.'s conclusions are clear.

"Of all the daunting environmental challenges that D.E.C. has faced during the past 40 years—criteria pollutants, hazardous waste, acid rain, even climate change—hydrofracking in the Marcellus may be the most difficult and daunting of them all," the text says.

Mr. Martens is quoted as adding: "If nothing else, it seems to me, the department should go slow. The tragedy of the Deepwater Horizon operation in the gulf clearly demonstrated that the unexpected can and will happen. It is also clear that the gas industry has not been as candid as it should have been with regards to the potential for problems."

"That suggests to me that our fate—and the need to separate objective science and environmental assessment from industry rhetoric—is in D.E.C.'s hands, and the stakes could not be higher," the text says. "The E.P.A. has initiated a \$1.9 million, two-year study of the impact of hydrofracking on health and the environment. What's the down side of waiting for the results?"

(The transcript was originally posted at the Open Space Institute's Web site, Pressconnects.com said. But the text is longer available there.)

Wall Street Journal

JANUARY 3, 2011, 10:36 P.M. ET

Pa. allows dumping of tainted waters from gas boom

Associated Press

The natural gas boom gripping parts of the U.S. has a nasty byproduct: wastewater so salty, and so polluted with metals like barium and strontium, most states require drillers to get rid of the stuff by injecting it down shafts thousands of feet deep.

Not in Pennsylvania, one of the states at the center of the gas rush.

There, the liquid that gushes from gas wells is only partially treated for substances that could be environmentally harmful, then dumped into rivers and streams from which communities get their drinking water.

In the two years since the frenzy of activity began in the vast underground rock formation known as the Marcellus Shale, Pennsylvania has been the only state allowing waterways to serve as the primary disposal place for the huge amounts of wastewater produced by a drilling technique called hydraulic fracturing, or fracking.

State regulators, initially caught flat-footed, tightened the rules this year for any new water treatment plants, but allowed any existing operations to continue discharging water into rivers.

At least 3.6 million barrels of the waste were sent to treatment plants that empty into rivers during the 12 months ending June 30, according to state records. That is enough to cover a square mile with more than 8 1/2 inches of brine.

Researchers are still trying to figure out whether Pennsylvania's river discharges, at their current levels, are dangerous to humans or wildlife. Several studies are under way, some under the auspices of the Environmental Protection Agency.

State officials, energy companies and the operators of treatment plants insist that with the right safeguards in place, the practice poses little or no risk to the environment or to the hundreds of thousands of people, especially in western Pennsylvania, who rely on those rivers for drinking water.

But an Associated Press review found that Pennsylvania's efforts to minimize, control and track wastewater discharges have sometimes failed.

For example:

— Of the roughly 6 million barrels of well liquids produced in a 12-month period examined by The AP, the state couldn't account for the disposal method for 1.28 million barrels, about a fifth of the total, due to a weakness in its reporting system and incomplete filings by some energy companies.

— Some public water utilities that sit downstream from big gas wastewater treatment plants have struggled to stay under the federal maximum for contaminants known as trihalomethanes, which can cause cancer if swallowed over a long period.

— Regulations that should have kept drilling wastewater out of the important Delaware River Basin, the water supply for 15 million people in four states, were circumvented for many months.

In 2009 and part of 2010, energy company Cabot Oil & Gas trucked more than 44,000 barrels of well wastewater to a treatment facility in Hatfield Township, a Philadelphia suburb. Those liquids were then discharged through the town sewage plant into the Neshaminy Creek, which winds through Bucks and Montgomery counties on its way to the Delaware River.

Regulators put a stop to the practice in June, but the more than 300,000 residents of the 17 municipalities that get water from the creek or use it for recreation were never informed that numerous public pronouncements that the watershed was free of gas waste had been wrong.

"This is an outrage," said Tracy Carluccio, deputy director of the Delaware Riverkeeper Network, an environmental group. "This is indicative of the lack of adequate oversight."

The situation in Pennsylvania is also being watched carefully by regulators in other states, some of which have begun allowing some river discharges. New York also sits over the Marcellus Shale, but then-Gov. David Paterson slapped a moratorium on high-volume fracking last month while environmental regulations are drafted.

Industry representatives and the state's top environmental official insist that the wastewater from fracking has not caused serious harm anywhere in Pennsylvania, in part because it is safely diluted in the state's big rivers. But most of the largest drillers say they are taking action and abolishing river discharges anyway.

Cabot, which produced nearly 370,000 barrels of waste in the period examined by The AP, said that since the spring it has been reusing 100 percent of its well water in new drilling operations, rather than trucking it to treatment plants for disposal.

"Cabot wants to ensure that everything we are doing is environmentally sound," said company spokesman George Stark. "It makes environmental sense and economic sense to do it."

All 10 of the biggest drillers in the state say they have either eliminated river discharges in the past few months, or reduced them to a small fraction of what they were a year ago. Together, those companies accounted for 80 percent of the wastewater produced in the state.

The biggest driller, Atlas Resources, which produced nearly 2.3 million barrels of wastewater in the review period, said it is now recycling all water produced by its wells in their first 30 days of operation, when the flowback is heaviest. Half of the rest is now sent to treatment plants, but "our ultimate goal is to have zero surface discharge of any of the water," said Atlas senior vice president Jeff Kupfer.

John Hanger, secretary of Pennsylvania's Department of Environmental Protection, said he believed that the

amount of drilling wastewater being recycled is now about 70 percent — an achievement he credits to tighter state regulation pushing the industry to change its ways.

"The new rules, so far, appear to be working," he said. "If our rules were not changed ... we would have all of it being dumped in the environment, because it is the lowest cost option," Hanger said.

But he cautioned that rivers need to be watched closely for any sign that they have degraded beyond what the new state standards allow.

"This requires vigilance," he said. "Daily vigilance."

A number of gas drillers have begun recycling wastewater in other parts of the country to cut down on the costs of disposal and of obtaining the fluids needed for new fracturing jobs.

Still, with dozens more energy companies at work in the state's surging gas industry, more than 2,400 wells drilled and work starting on 5,400 more, operators of the largest of the state's 16 most commonly used treatment plants say they haven't lost much business. Records verifying company claims of a major dropoff in river disposal will not be available until midwinter.

University of Pittsburgh scientist Conrad Volz, who has been studying the environmental effect of the wastewater discharges, said he had student researchers in the field this fall documenting a steady flow of brine-filled tankers arriving at plants on the Monongahela River south of Pittsburgh, and on the Blacklick Creek, 17 miles northwest of Johnstown.

"We've been taking pictures of the trucks," he said. "We know it's still happening."

Researchers are still trying to figure out, he said, whether the wastewater discharges, at their current levels, could cause serious environmental harm.

The municipal authority that provides drinking water to Beaver Falls, 27 miles northwest of Pittsburgh, began flunking tests for trihalomethanes regularly last year, around the time that a facility 18 miles upstream, Advanced Waste Services, became Pennsylvania's dominant gas wastewater treatment plant.

Trihalomethanes aren't found in drilling wastewater, but there can be a link. The waste stream often contains bromide, a salt, which reacts with the chlorine disinfectants used by drinking water systems to kill microbes. That interaction creates trihalomethanes.

The EPA says people who drink water with elevated levels of trihalomethanes for many years have an increased risk of getting cancer and could also develop liver, kidney or central nervous system problems.

Gas drilling waste isn't the only substance that can cause elevated trihalomethane levels. Pennsylvania's multitude of acid-leaching, abandoned coal mines and other industrial sources are also a major factor in the high salt levels that lead to the problem.

Beaver Falls plant manager Jim Riggio said he doesn't know what is causing the problem, but a chemical analysis raised the possibility that it might be linked to the hundreds of thousands of barrels of partially treated gas well brine that now flow past his intakes every year.

"It all goes back to frackwater," he said.

Natural gas drilling has taken off in several U.S. states in recent years because of hydraulic fracturing and horizontal drilling, techniques that allow more methane than ever before to be unlocked from ancient shale sea beds buried deep underground.

Fracturing involves injection of millions of gallons of water mixed with chemicals and sand deep into the rock, shattering the shale and releasing the gas trapped inside. When the gas comes to the surface, some of the water comes back, too, along with underground brine that exists naturally.

It can be several times saltier than sea water and tainted with fracking chemicals, some of which can be carcinogenic if swallowed at high enough levels over time.

The water is also often laden with barium, which is found in underground ore deposits and also used by drillers as a bit lubricant. It can cause high blood pressure if someone ingests enough of it over a long period of time.

Particles in the water are also often tainted with radium, a naturally occurring radioactive substance, and strontium, a mineral abundant in rocks, earth, coal and oil.

The amount of produced water varies from well to well, but in Pennsylvania it has been running at around 1 to 2 gallons for every 10 gallons injected into the ground.

In some parts of the state, there have also been fights over whether the drilling process itself has the potential to contaminate nearby drinking water wells.

Cabot agreed in December to pay \$4.1 million to 19 homeowners in Dimock, Pa., whose private wells, Pennsylvania authorities said, were contaminated by methane gas migrating underground from a drilling site. Cabot denies responsibility for the pollution.

As for the unauthorized discharges into Neshaminy Creek, Cabot spokesman Stark said the company was aware that its waste shouldn't have been going to facilities in the Delaware Basin. He said he wasn't sure, however, whether Cabot knew where the firm it had hired to treat the waste, PSC Environmental Services, was discharging the fluids.

Regulators did not impose any fines after Cabot and the two treatment plants halted the discharges.

Clifford David, president of the Heritage Conservancy, a nature and land preservation group in Bucks County, said he was wasn't aware that gas drilling wastes had been discharged in the creek.

He said he doesn't believe any wastewater discharges should be allowed without a thorough treatment that removes all contaminants that could degrade a waterway.

"It seems to me that we have the technology and the capacity to take that water and clean it to a level where it's a higher water quality than what's in the river to begin with," he said.

When companies recycle their wastewater, they lightly treat it for particles and some other substances, combine it with fresh water, and reuse it in a new fracturing job.

Operators of the treatment plants handling the bulk of the waste still being discharged into Pennsylvania rivers say they can remove most of the toxic pollutants without much trouble, including radium and barium.

"We have been able to do it carefully. We have been able to do it safely," said Al Lander, President of Tunnelton Liquids, one of the state's busiest treatment plants. The facility, near Saltsburg, east of Pittsburgh, treats both drilling water and acid draining out of an abandoned mine.

"In some respects, it's better than what's already in the river," he said of the water his plant discharges into the Conemaugh. "What we are putting into the river now is far cleaner, and far more eco-friendly than what was running in naturally from acid mine drainage."

The one thing that can't be removed easily, except at great expense, he said, are the dissolved solids and chlorides that make the fluids so salty.

Those substances usually don't pose a health risk to humans in low levels, said Paul Ziemkiewicz, director of the West Virginia Water Research Institute at West Virginia, but high enough levels can foul the taste of drinking water, leave a film on dishes and could give people diarrhea.

In 2008, workers at two plants that draw water from the Monongahela River, U.S. Steel in Clairton and Allegheny Energy, noticed that salt levels had spiked so high that equipment was corroding. State regulators suspected it was related to gas drilling waste being discharged through sewage treatment facilities.

Today, however, it remains unclear how much of a role the wastewater had in the salt spike. Some research has suggested that abandoned coal mines, which release far greater pools of polluted water into the state's rivers than gas drilling, were predominantly to blame for the problem.

Salt levels have spiked again on the Monongahela since 2008, even though relatively little drilling wastewater is now being discharged into that waterway.

"The best thing to do with this type of wastewater is recycle it," Ziemkiewicz said.

In rural states like Wyoming and Colorado, environmentalists have complained that surface discharges of other types of salty groundwater, like the millions of gallons of brine pumped out of the water table to retrieve methane from shallow coal beds, have affected grazing land or destroyed the sensitive ecology of ephemeral stream beds.

"Cottonwood trees are being drowned. Their roots are being suffocated. Good grasses are being changed to a salt-tolerant saw grass that livestock and wildlife will not eat," said Jill Morrison, of the Powder River Basin Resource Council in Wyoming.

In places like the Barnett Shale field in Texas and the Haynesville Shale in Louisiana, fracking has ignited a gas bonanza, but the dominant disposal method for drilling wastewater there and in other big gas-producing states like West Virginia, New Mexico and Oklahoma are injection wells. These wells, which are regulated by EPA, consist of shafts drilled as deep as the ones that produce shale gas.

In some arid states, wastewater is also treated in evaporation pits. Water is essentially baked off by the sun, leaving a salty sludge that is disposed of in wells or landfill.

When Pennsylvania's gas rush began a few years ago, the state only had a few injection wells in operation. Ohio had more, but trucking wastewater so far was expensive. Evaporation pits wouldn't work because of the state's wet climate.

River dumping turned out to be the easy answer.

The Environmental Protection Agency requires all polluters to get a permit before they can discharge wastewater into rivers and streams. In theory, the permits limit how dirty the effluent can be when it is discharged into a river and ensure that the water quality doesn't degrade.

But Pennsylvania, which administers the EPA permit program within its borders, initially lacked a clear regulatory scheme to deal with the big increases in volume created by the gas boom and wasn't initially aware that some facilities had begun handling the waste.

Since then, the state has enacted tougher water quality standards. The new rules, adopted last summer, allow existing treatment plants to continue operating with few changes, but will require new facilities to meet strict targets for dissolved solids and chlorides

Essentially, the water they discharge must be no saltier than tap water. Existing treatment plants could also be forced to alter their operations if a river fails to hit another salt standard, even if they are not the primary source of the problem. Hanger said he doesn't believe any state waterway has exceeded the state's new standard yet.

Operators of several of the public water utilities closest to the biggest plants say they are testing for any signs of degradation in the quality of the raw water flowing into their intakes.

Much of the drilling wastewater legally discharged in Pennsylvania eventually flows into the Allegheny or Monongahela Rivers and ultimately past the drinking water plants for the city of Pittsburgh.

Along the way, it passes more than 20 public drinking water intakes from Emlenton and Clarion, halfway between Pittsburgh and the New York line, to the Tri-County Joint Municipal Authority on the Monongahela in Fredericktown, 20 miles from West Virginia.

Chemists for the Pittsburgh Water and Sewer Authority have been monitoring the river water and testing for salt levels and a variety of other contaminants.

However, "that kind of monitoring and sampling work doesn't always happen frequently," said Volz, the Pitt professor.

At the Buffalo Township Municipal Authority in Freeport, 23 miles northeast of Pittsburgh — which has the distinction of being closer to more gas wastewater treatment facilities than any other municipal water supplier in the state — plant manager Don Amadee said he was "not aware of any issues" yet with his water quality.

But he added that as a small supplier, the authority doesn't have much expertise in drilling waste and may not be testing for every contaminant that could be in the effluent.

Area waterworks, he said, have been communicating more about the problem and keeping in touch with chemists downstream at the bigger water suppliers.

Shifting industry practices have, at times, made it hard for the public officials and researchers monitoring the potential environmental impact of the discharges.

For a time, many focused their attention on the Monongahela River after drilling waste was suspected of contributing to an unusually high load of chlorides and dissolved solids on the waterway in 2008.

But state records show very little drilling waste was discharged to plants on the Monongahela in 2009 or early 2010. They show 55,257 barrels sent to treatment plants in that river's watershed over the 12-month period analyzed by The AP, compared to 1.2 million barrels sent to facilities on the Conemaugh River and one of its tributaries, the Blacklick Creek.

The Delaware River Basin Commission, which regulates water use in a 13,539-square-mile area that supplies drinking water to New York City, Philadelphia and many other cities in towns in New Jersey, New York, Pennsylvania and Delaware, has put a moratorium on new Marcellus Shale drilling projects because of environmental concerns.

But in early December, it proposed regulations that would lift the ban and allow drilling to finally ramp up in eastern Pennsylvania, as it has in other parts of the state, though under close oversight.

Among other things, the rules would require drillers to submit a plan detailing how they intend to dispose of wastewater and require them to perform a "treatability study" confirming that any discharges won't cause a water body to fall below EPA water quality standards.

Texas has allowed a plant in Fort Worth to discharge about several thousand barrels of drilling wastewater into surface waters through the sewage treatment system. That small operation represents a barely noticeable fraction of the huge volumes of wastewater produced by wells in the nation's biggest gas state.

Ohio, which also sits over the same gas play as Pennsylvania, has previously allowed its wastewater only in deep injection wells because of environmental concerns, but this year it allowed a treatment plant on the Mahoning River to take some well brine for the first time, with a goal of ramping up operations in 2011.

Politically, the decision to allow the discharges, through a plant in the City of Warren, may have been easy to make. Ohio has no drinking water intakes down river from the plant.

The closest one is farther downstream in Pennsylvania — in Beaver Falls.

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Wall Street Journal

JANUARY 4, 2011, 6:59 P.M. ET

Pa. official defends rules on gas drilling waste

Associated Press

Pennsylvania's top environmental enforcement official said Tuesday that he is confident that wastewater discharged into rivers and streams by the booming natural gas industry hasn't degraded the state's drinking water.

At least 3.6 million barrels of the ultra-salty, chemically tainted wastewater produced by gas drilling operations were discharged into state waterways in the 12-month period that ended June 30, according to records reviewed by The Associated Press. Drinking water for hundreds of thousands of Pennsylvanians is drawn from those rivers and streams.

Those discharges have troubled some environmentalists. Most of the big drilling companies digging thousands of new wells in Pennsylvania have committed to curtailing or ending the practice.

John Hanger, the outgoing secretary of Pennsylvania's Department of Environmental Protection, said he believes the new regulations are adequate to protect water supplies.

"The drinking water at the tap in Pennsylvania is safe. It has not been contaminated by drilling," he said.

The state set new standards in August governing discharges by any new drilling waste treatment plants, but allowed existing operations to continue putting partially treated wastewater into rivers and streams, as long as the water body's quality does not fall below federal drinking water standards.

Hanger said state officials have been using a network of sensors operated by his department and water supply companies to monitor for signs that rivers may have sustained a significant drop in water quality.

So far, he said, they haven't found any.

Many researchers have been particularly concerned with how the high levels of salt and dissolved solids in drilling waste might affect rivers, especially those that have already picked up unhealthy amounts of pollution from other sources, including abandoned coal mines.

If a river's total load of dissolved solids gets high enough, it can make the water taste bad, leave a film on dishes, corrode equipment and could give people diarrhea. Researchers, some of them working under the auspices of the federal Environmental Protection Agency, are still trying to determine if Pennsylvania's river discharges, at their current levels, are dangerous to humans or wildlife.

Hanger said no river used for drinking water has exceeded the EPA standard for dissolved solids for an extended period, although there have been some instances of seasonal spikes that can last for a few days.

"We are watching it very closely," he said.

Pennsylvania is rare among gas-producing states in that it allows the wastewater that flows out of natural gas wells to be disposed of in rivers.

In most states, drillers are required to send the liquid back down deep shafts so it can't pollute surface water.

Drilling companies use about 2 million gallons of water a day in Pennsylvania to help get at the gas locked in its vast underground Marcellus Shale gas field. During a process called hydraulic fracturing, the water — mixed with sand and chemicals, some of them toxic — is forced into the wells at high pressure, shattering the shale and releasing trapped gas.

There has been a fierce debate over whether the wastewater that returns to the surface is hazardous.

It can contain high levels of some toxins, like barium, strontium and radium, but the treatment plants handling the bulk of Pennsylvania's gas drilling waste remove most of those substances before discharging the water.

State officials and industry participants say the amount of waste put back into waterways, while significant, is also safely diluted by the massive volumes of water in the rivers, reducing both any residual toxins and the salt to safe levels.

An AP review of state records found that the state couldn't account for the disposal method for 1.28 million

barrels of drilling wastewater, about a fifth of its total, because of incomplete record keeping.

Hanger said the state is working to improve its methods for tracking wastewater, including making recent hires of additional staff.

"There's always room for improvement," he said.

It also found that in 2009 and part of 2010, about 44,000 barrels of drilling waste produced by the energy company Cabot Oil & Gas were improperly sent to a treatment facility in Hatfield Township, a Philadelphia suburb, despite regulations intended to keep the liquids out of the watershed. The liquids were then discharged through the town sewage plant into the Neshaminy Creek, which flows through Bucks and Montgomery counties on its way to the Delaware River. Customers in 17 municipalities get treated drinking water from that creek.

Water quality test results reviewed by the AP also showed that some public water utilities downstream from gas wastewater treatment plants have struggled to stay under the federal maximum for contaminants known as trihalomethanes, which can cause cancer if people drink tainted water for many years.

Trihalomethanes can be created during the water treatment process by dissolved solids in drilling waste, but other types of pollution are just as often to blame for the problem.

Hanger said those trihalomethane readings are "of concern," but he couldn't say definitively whether there was any link to gas drilling waste.

Faced with opposition to river dumping and tightening state regulations, all of the state's biggest drillers say they are now recycling a majority of the wastewater produced by their wells in new fracturing jobs, rather than sending it to treatment plants.

Hanger said about 70 percent of the wastewater is now being recycled, which he credits to the tighter state regulations.

Still, with dozens more energy companies drawn to the Marcellus reserves — more than 2,400 wells have been drilled and work has started on 5,400 more — operators of the largest of the state's 16 most commonly used treatment plants say they haven't lost much business. In midwinter, records will be available to verify company claims of any major drop-off in river disposal.

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REVIEW & OUTLOOK JANUARY 4, 2011

The EPA's War on Texas

The agency punishes the state for challenging its anticarbon rules.

The Environmental Protection Agency's carbon regulation putsch continues, but apparently abusing the clean-air laws of the 1970s to achieve goals Congress rejected isn't enough. Late last week, the EPA made an unprecedented move to punish Texas for being the one state with the temerity to challenge its methods.

To wit, the EPA violated every tenet of administrative procedure to strip Texas of its authority to issue the air permits that are necessary for large power and industrial projects. This is the first time in the history of the Clean Air Act that the EPA has abrogated state control, and the decision will create gale-force headwinds for growth in a state that is the U.S. energy capital. Anyone who claims that carbon regulation is no big deal and that the EPA is merely following the law will need to defend this takeover.

Since December 2009, the EPA has issued four major greenhouse gas rule-makings, and 13 states have tried to resist the rush. The Clean Air Act stipulates that pollution control is "the primary responsibility of states and local government," and while the national office sets overall priorities, states have considerable leeway in their "implementation plans." When EPA's instructions change, states typically have three years to revise these plans before sending them to Washington for approval.

This summer, the 13 states requested the full three years for the costly and time-consuming revision process, until the EPA threatened economic retaliation with a de facto construction moratorium. If these states didn't immediately submit new implementation plans to specification, the agency warned, starting in 2011 projects "will be unable to receive a federally approved permit authorizing construction or modification." All states but Texas stood down, even as Texas continued to file lawsuits challenging the carbon power grab.

Two weeks ago, EPA air regulation chief Gina McCarthy sent the Texas environmental department a letter asserting that the agency had "no choice" but to seize control of permitting. She noted "statements in the media" by Texas officials and their "legal challenges to EPA's greenhouse gas rules," but she cited no legal basis.

[View Full Image](#) / Associated Press / Gina McCarthy

And no wonder. The best the EPA could offer up as a legal excuse for voiding Texas's permitting authority last Thursday was that EPA had erred in originally approving the state's implementation plan—in 1992, or three Presidents ago.

The error that escaped EPA's notice for 18 years was that the Texas plan did not address "all pollutants newly subject to regulation . . . among them GHGs [greenhouse gases]." In other words, back then Texas hadn't complied with regulations that didn't exist and wouldn't be promulgated for another 18 years.

The takeover was sufficiently egregious that the D.C. circuit court of appeals issued an emergency stay on Thursday suspending the rules pending judicial review. One particular item in need of legal scrutiny is that the permitting takeover is an "interim final rule" that is not open to the normal—and Clean Air Act-mandated—process of public notice and comment. So much for transparency in government.

The EPA claims its takeover is a matter of great urgency, but Texas is being pre-emptively punished for not obeying rules that don't exist today because the EPA hasn't finalized them. "Now, at this early stage, there's no specifics to tell you about the rules in terms of what we're announcing today, other than they will be done and we'll move—take steps moving forward in 2011," Mrs. McCarthy told reporters on a conference call last week about the agency's "performance standards" for oil refineries, power plants, cement manufacturers and other such CO2-heavy facilities.

"It's way too early in the game right now to be talking about what we think the standards are going to look like," she added helpfully. "Today's announcement is just the fact we're going to move to those standards."

This and other permitting uncertainties have brought major projects in the U.S. to a standstill. The Texas takeover in particular is pure political revenge and an effort to intimidate other states from joining the Texan lawsuits. The reason states are supposed to run the clean-air process is that local regulators have the staff, capacity and expertise that Washington lacks. When the carbon rules eventually are issued, that means the takeover will extend the current moratorium even longer in Texas.

The EPA concedes that some 167 current projects will be affected, and many more in the future. Our guess is that all of them will be delayed for years and many will simply die. This is precisely the goal of a politically driven bureaucracy that wants to impose by illegal diktat the anticarbon, anti-fossil fuel agenda that the Obama Administration has been unable to pass by democratic consent.

Downtown Express

January 5 - 11, 2011

City Dept of Education not buying into new enviromental standards

BY Aline Reynolds

The city Department of Education and the Environmental Protection Agency are at odds concerning recent discussions over eliminating possible airborne toxins from public schools.

The E.P.A. released guidelines last Wednesday for the safe and immediate removal of polychlorinated biphenyls from lighting ballasts in school buildings. The city D.O.E., though, is not quite ready to jump on board with the program and is specifically questioning the urgency of the E.P.A.'s claims.

In a recent letter to Dennis Walcott, the city's deputy mayor for education, the E.P.A. recommended that all P.C.B.-containing lighting fixtures be removed in a safe and "expedited" fashion. It hopes to schedule school inspections in the coming months with the D.O.E.'s help, according to Judith Enck, the E.P.A.'s regional administrator. Enck also suggested that the D.O.E. create a working group to produce a written strategy plan by March 15, 2011.

In response to Enck's letter, Walcott said a wholesale replacement of ballasts is "an inadequately informed risk management strategy."

The chemicals, used as insulators in school buildings prior to 1979, are toxic and pose long-term health threats to students, teachers and staff, according to medical reports.

The E.P.A. and the D.O.E. co-launched a pilot program last year, testing P.C.B. levels in five schools around the city. Three of the schools had broken lighting ballasts, which, if not properly dismantled, can cause the noxious chemicals to seep into the air.

Walcott also questioned the E.P.A.'s scientific assessment of the pilot program, arguing that health studies have not tied the P.C.B. levels with direct health effects among students or staff.

"Available health literature suggests that the theoretical risk of health impacts is too low from this exposure... to justify a public health-driven intervention to immediately remove all P.C.B.-containing ballasts in all New York City public schools," Walcott wrote. Limiting P.C.B. exposure, therefore, merits "a more thoughtful and careful evaluation of realistic risk management strategies," he said.

Replacing the lighting ballasts in the nearly 800 public school buildings that are potentially contaminated, Walcott explained, would amount to \$1 billion and would require "unprecedented" amounts of supervision and manpower. The steep investment, he said, could result in staff layoffs, a loss of educational programs and an annulment of school construction projects around the city.

"We believe that this discussion should include federal funding to allay the vast financial burdens on the city of such an initiative," Walcott said.

Nineteen schools in the Downtown area were built prior to 1979 and are therefore at risk of P.C.B. contamination, according to data collected by Communities for Change, a citywide organization representing low-income families.

"We saw what happened with lead and paint — we decided we had to be a part of finding a solution to this," said Jonathan Westin, president of Communities for Change.

"Parents are really concerned about the future of their children's health," said ALord Allah, chairman of the District 1 Parent Advisory Council.

Allah has been educating Lower East Side schools about the dangerous toxins since last fall. He distributed petitions to L.E.S. parents and teachers, requesting their schools be tested for P.C.B.s. Communities for Change and New York Lawyers for the Public Interest then sent the petitions to the D.O.E. and E.P.A.

The city, however, might have to comply with the E.P.A.'s initiative in order to avoid federal penalties. Failing lighting ballasts, according to Enck, puts the city at "substantial risk under the [Toxic Substances Control Act]."

As for the costs, the E.P.A. said that new lighting fixtures will pay for themselves in long-term energy savings. The city is also eligible for federal bonds, according to the E.P.A., that would help finance the plan.

Congressman Jerrold Nadler, along with New York Representatives Jose Serrano and Joseph Crowley, recently introduced the Safe Schools, Healthy Kids Act, a new law that would set up a federal grant program to finance P.C.B. cleanup in schools.

"We welcome these guidelines for the aggressive and comprehensive abatement of lighting ballasts under the oversight of the E.P.A., and we renew our call on New York City's Department of Education to step up its testing and remediation program," Nadler and Crowley said in a joint statement.

Nadler formed a citywide coalition last October, urging the E.P.A. to take immediate action. He said he plans to work with schools and communities Downtown and citywide in an effort to do away with the toxins.

Long-term exposure to the chemicals can cause cancer, immune disorders and hormonal imbalances in children, according to Dr. Warren Licht, chief medical officer at Downtown Hospital. He stressed, however, that they're only dangerous if they become airborne. "If it's sitting idle in a wall somewhere without being disturbed," he said, "I wouldn't worry about it."

P.C.B.s were once widely used to insulate electrical equipment since they are non-explosive and have a high tolerance for heat. The E.P.A. banned their distribution in 1979, however, after learning about their health effects.

Brooklyn Eagle

EPA, City Disagree On Need To Rush School PCB Testing

01-04-2011

Meanwhile, EPA Issues PCB Removal Guidelines

By Mary Frost

Brooklyn Daily Eagle

NEW YORK CITY — After initial tests conducted by the city found unacceptable levels of toxic PCBs (polychlorinated biphenyls) leaking from lighting fixtures and caulk in three public schools, the Environmental Protection Agency (EPA) said it will begin inspecting lighting fixtures in hundreds of city schools this month.

Lighting ballasts and caulking installed between 1950 and 1978 contain the now-banned PCBs, which have been linked to cancer, respiratory, endocrine and immune disorders. City officials, however, want to stick to a more gradual multi-year PCB testing protocol instead of taking immediate action. The city claims that replacing the deteriorating fixtures could cost a billion dollars — money better spent on teachers and supplies.

EPA Regional Administrator Judith A. Enck questioned the city's estimate in a Dec. 15 letter to Deputy Mayor Dennis Walcott.

"We have no understanding of how this figure was arrived at. Retrofits carried out at other school districts in this region and elsewhere have been considerably less costly. The New York City Long Term Action Plan for Reducing Energy Consumption, published in July 2008, projected an equipment replacement and retrofit cost of \$1.8 billion for all city-owned buildings and schools," she wrote.

Deputy Mayor Walcott defended the city's stance in a reply to Enck and said it was unfair to single out New York City when the PCB problem affects schools nationwide.

"To our knowledge, we are still the only major municipality in the country that has entered into a binding agreement with the EPA to study the issues of PCBs in school buildings and to develop measures to reduce PCB exposures," he said.

"We are also the only major municipality that has legally committed to drafting and negotiating a system-wide PCB management plan. At this point, we believe it fair to say that the New York City Pilot Study — which has been fully funded by the city, not EPA — has generated more data on PCBs in school buildings than any other study previously in existence."

PCB Removal Guidelines

Over the holidays, the EPA released new guidelines for the remediation and safe disposal of PCBs from lighting ballasts in school buildings. New York Congressmen Jerrold Nadler, Joseph Crowley and José Serrano, who have been pushing the city to comprehensively test schools for PCBs, applauded the move.

“The EPA’s new guidelines for the remediation of PCB-laden light ballasts in our schools represent a timely and welcome step,” Nadler and Crowley said in a joint statement. “In New York City, PCB-contamination is alarmingly widespread and threatens the health of potentially hundreds of thousands of schoolchildren.”

PCBs in Excess of Recommended Levels

New York Lawyers for the Public Interest, the NYC Coalition for PCB-Free Schools and other groups have been applying pressure on the city for roughly two years to take action on PCBs. As part of a consent agreement triggered by a parent’s lawsuit, New York City tested three schools this past summer.

All three schools — P.S. 309K/Excellence Charter School in Brooklyn, P.S. 199 in Manhattan and P.S. 178 in the Bronx — were found to have PCB contamination well in excess of recommended levels. At P.S. 309 in Brooklyn, some soil and air samples had roughly 50 times the allowable levels of PCBs.

Conditions Called ‘Hair-Raising’

Miranda Massie, litigation director for New York Lawyers for the Public Interest, which has been working with parents and community members on this issue, told the Brooklyn Eagle in December, “From our point of view, the initial pilot study results show that the situation is much worse than anticipated. We need citywide testing now. It is essentially certain that PCB air levels in many schools across the city are just as unacceptable as the levels in the pilot-study schools.”

Saying that there is no “immediate” risk to students and teachers is misleading, she said. “The long-term risks have been clearly established by peer-reviewed science. The conditions linked to PCBs are hair-raising — damage to the IQ, diabetes, endocrine disruption and immune problems. These are highly significant risks, and the city is not being candid with parents about them.”

Read the new DEC commissioner’s speech

01/04/2011

Star-Gazette

Newly appointed state Department of Environmental Conservation Commissioner Joe Martens is the former president of the New York-based Open Space Institute. Last year, he gave a speech on the Marcellus Shale and hydraulic fracturing at Union College in Schenectady as part of an event marking the 40th anniversary of the DEC.

The following is a transcript of that speech as posted on the Open Space Institute website:

This morning you heard about drilling in the Marcellus Shale. Of all the daunting environmental challenges that DEC has faced during the past 40 years—criteria pollutants, hazardous waste, acid rain, even climate change—hydrofracking in the Marcellus may be the most difficult and daunting of them all.

As a nation, for a decade or more there has been a near-universal call for energy independence. If we could just wean ourselves from foreign oil, the argument goes, we would not be in the middle of two wars in the Middle East and sending billions of dollars to nations that don't like us and, potentially, might do us harm.

And, as a state, we have been turning increasingly to natural gas to fire our power plants and heat our homes, because it's less polluting than either coal or oil. I heat my home with natural gas (and wood!). Further, the state's budget is in bad shape, unemployment is high and it just so happens that we have this huge rock formation under our feet that the gas industry has found a way to exploit and we even have a terrific new gas pipeline that could bring that gas to millions of nearby customers.

If nothing else, it seems to me, the Department should go slow. The tragedy of the Deepwater Horizon operation in the Gulf clearly demonstrated that the unexpected can and will happen. It is also clear that the gas industry has not been as candid as it should have been with regards to the potential for problems. That suggests to me that our fate—and the need to separate objective science and environmental assessment from industry rhetoric—is in DEC's hands, and the stakes could not be higher.

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The gas industry, and even DEC, is quick to point out that gas drilling and fracking are not uncommon in New York State and that, so far, there have not been any significant problems. However, what is relatively new and different is the combination of fracking and horizontal drilling. And it's the potential scale of drilling within the Marcellus Shale that is the real concern. If DEC decides to give the gas industry the green light, there could be thousands of new gas wells drilled in the Catskills and the southern tier. Given the quantity of the chemical-laced water that would be used in fracking (up to 8 million gallons per well), and the quantity of wastewater that would need to be treated, the number of roads that would need to be constructed, the number of trucks that would travel back and forth to drilling sites, and so on, the potential for problems multiplies dramatically with each well that is drilled.

New Yorkers created the Adirondack and Catskill state parks more than a hundred years ago to protect the water resources within them. New York City has committed hundreds of millions of dollars and has spent years protecting its watershed so that more than 9 million people can drink unfiltered water. I see no reason to rush to judgment on a decision as monumental as hydrofracking in the Marcellus.

Given the huge budget cuts that DEC has been forced to endure over the last couple of years and in light of the way the EPF's commitments have been abandoned, I think there is a real question about DEC's capacity to ensure that everything involved in the drilling process goes according to plan—from water withdrawals, to

wastewater treatment, to pipeline construction. Clearly things did not go according to plan in the Gulf of Mexico.

The EPA has initiated a \$1.9 million, two-year study of the impact of hydrofracking on health and the environment. What's the downside of waiting for the results?

In the meantime, while DEC and others continue to explore this issue, wouldn't it be great if we had a national energy policy that did more than pay lip service to energy conservation, efficiency and renewable sources? A few statistics for you to ponder:

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The United States makes up 5 percent of the world's population but consumes 20 percent of its energy;

Eighty-four percent of the energy consumed in the United States comes from non-renewable sources—about 8.5 percent from nuclear power and 7 percent from renewable sources (2006 data);

Twenty-seven percent of the energy consumed in the United States is used in the transportation sector;

And, the most troubling statistic of all: per capita energy consumption in the United States has been relatively consistent from 1970 to today.

Although no energy source is perfect or without problems, shouldn't we be doing everything possible to reduce energy consumption and do everything possible to increase the use of renewable resources before we make a major decision to exploit the Marcellus Shale and possibly damage, perhaps irreparably, the land, air and water resources that sustain life itself?

DEC has a heavy burden to bear here. For the past 40 years they have addressed a variety of environmental challenges with remarkable success. I'm hopeful, based on that 40-year record that they will continue to do so.

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